



**Compendium to the Final Water Taking and Transfer
Regulation (Ontario Regulation 387/04)**

December 2004

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Introduction

Water takings in Ontario are governed by the *Ontario Water Resources Act* and the Water Taking and Transfer Regulation, a regulation under the Act. Section 34 of the *Ontario Water Resources Act* requires anyone taking more than a total of 50,000 Litres of water in a day, with some exceptions, to obtain a Permit from a Director appointed by the Minister for the purposes of Section 34.

Further to consultations held on proposed amendments to the Water Taking and Transfer Regulation (O. Reg. 285/99) posted on the Environmental Registry for a 60 day period from June 18, 2004 to August 17, 2004, the Ministry of the Environment is posting a new Water Taking and Transfer Regulation (O. Reg. 387/04).

This document provides an outline of the changes from the old regulation as they appear in the new regulation, O. Reg. 387/04, section by section.

Section 1 – Purpose

The purpose of the regulation remains the same:

to provide for the conservation, protection and wise use and management of Ontario's waters, because Ontario's water resources are essential to the long-term environmental, social and economic well-being of Ontario.

Section 2 – Definitions

New definitions of the following terms have been added to support the proposed amendments in the regulation:

- Application
- Average Annual Flow Map
- Drinking Water Systems
- Great Lakes Charter
- Summer Low Flow Map

The definition of the “Great Lakes Charter” has been updated to reflect amendment of the Charter by the Great Lakes Charter Annex, dated June 18, 2001.

Section 3 – Maps

This section lists the addresses of all 5 regional offices of the Ministry of the Environment, as well as the Public Information Centre of the Ministry of the Environment, where copies of the two maps referenced in the regulation will be available for inspection.

Section 4 – Matters to be Considered by the Director

This section outlines the matters that a Director must consider when he/she is considering a permit to take water application or is otherwise considering a decision

under Section 34 of the Act to cancel, amend, or impose conditions on a permit to take water.

The Director must consider the following matters to the extent that information is available to the Director and is relevant to the particular case:

The need to protect the natural functions of the ecosystem including:

- Impact or potential impact on:
 - the natural variability of water flow or water levels
 - minimum stream flow
 - habitat that depends on water flow or water levels
- Interrelationships between groundwater and surface water, including impact or potential impact on water quantity and quality

Water availability

In this sub-section, new provisions are added relating to water availability and the potential impact on:

- water balance and sustainable aquifer yield
- existing uses of water for municipal water supply and sewage disposal, livestock, private domestic and agricultural purposes
- low water conditions
- whether the water taking or proposed water taking is in a high or medium use watershed
- planned municipal use of water that has been approved under a municipal official plan in accordance with the *Planning Act* (Part III) or under the *Environmental Assessment Act*.

Use of Water

This sub-section adds new provisions related to water use and conservation, including:

- whether water conservation is being implemented or is proposed to be implemented in accordance with best management standards and practices for the relevant sector, if available
- the purpose for which the water is being used or is proposed to be used
- if the water is not currently being used, whether there is a reasonable prospect that the person will actually use the water in the near future

Other issues

This sub-section identifies other issues that a Director shall consider including:

- the interests of other persons who have an interest in the water taking, to the extent that the Director is made aware of those interests
- any other matters that the Director considers relevant

If the Director is considering an application, s/he may require the applicant to submit additional information, including plans, specifications, reports or other materials relating to the water taking or proposed taking.

Section 5 – High Use Watersheds

This new section requires the Director to evaluate applications for new or expanding water takings that remove water from the watershed to first determine whether the watershed is in an area of high water use. Water use in all Ontario watersheds has been assessed and mapped under two scenarios: average annual conditions and summer low flow conditions.

If a watershed is identified as high use on the Average Annual Flow Map, applications will be refused regardless of the time of year that the water taking is proposed to occur.

If a watershed is defined as high use on the Summer Low Flow Map but not on the Average Annual Flow Map, a permit may be granted, provided that it includes a prohibition on water taking during the 6-week period from August 1 to September 11, or during a specified longer period that includes August 1 to September 11.

The prohibitions on taking water in this section do not apply to applications for takings from any of the following:

- Lake Ontario, Lake Erie, Lake Huron or Lake Superior or any of their connecting channels, namely the St. Mary's River, the St. Clair River, the Detroit River and the Niagara River
- the Welland Canal
- the St. Lawrence River
- the Ottawa River

Takings that remove water from the watershed that are subject to the prohibitions of this section include new or expanding water takings for the following purposes:

- Beverage manufacturing, including bottled water or water in other containers
- Fruit or vegetable canning or pickling
- Ready-mix concrete manufacturing, except for portable facilities
- Aggregate processing if the water is incorporated into a product in the form of a slurry
- Product manufacturing or production if more than 50,000 litres of water in a day is incorporated into the products

Existing permitted water takings for the above purposes will be allowed to continue, provided that at the time of application the applicant or another person holds an unexpired permit to take water and the application is for the same or lesser amount of water at the same location and for the same purpose.

Water that is taken as follows is exempt from the prohibitions of this section of the regulation:

- by a municipality
- only for washing in the course of canning or pickling
- for extraction of aggregates where the water taking is incidental to the extraction
- for manufacturing or production of pulp and paper
- for manufacturing or production of ethanol
- for agricultural purposes, including aquaculture, nurseries, tree farms, and sod farms

Section 6 – Great Lakes Charter

Minor changes in wording have been made to this section because a permit “application” is now a defined term under the Definitions in section 2.

Section 7 – Notice and Consultation

This section requires the Director to notify affected municipalities and conservation authorities of permit to take water applications. This provision applies to applications that are subject to posting on the Environmental Registry under the *Environmental Bill of Rights*, 1993. The means by which the Director may provide notice include mail, fax, e-mail, other electronic means, or in person.

This section also makes explicit the Director’s authority to require an applicant to report to the Director on efforts that the applicant has made to resolve any concerns raised by persons or governmental authorities who are notified or consulted.

Section 8 – Transition

This section clarifies how permit decisions around the date the regulation comes into force will be dealt with:

- applications received before January 1, 2005 will be dealt with according to the Water Taking and Transfer Regulation 285/99, even if the decision is made after 285/99 has been revoked
- applications received on or after January 1, 2005 will be dealt with according to the new Water Taking and Transfer Regulation (O. Reg. 387/04)
- decisions made on or after January 1, 2005 to cancel, amend or impose conditions on a permit to take water will be dealt with according to the new Water Taking and Transfer Regulation (O. Reg. 387/04)

Section 9 – Duties of Permit Holders

This new section stipulates that all permit holders must collect and record data on the volume of water taken daily and report the data to the Ministry on an annual basis. More frequent reporting can be required where needed.

Permit holders will be required to provide accurate information on the actual volumes of water taken. The volumes must be measured by flow meter and/or calculated using a method acceptable to the Director.

Data collection and reporting will be phased in over 3 years as follows:

1. Starting July 1, 2005, the following permit holders must record volume taken daily, and report the data annually on or before March 31, beginning in 2006:
 - municipal water supplies for small and large municipal residential systems as defined in Ontario Regulation 170/03
 - industrial dischargers regulated by the nine Municipal Industrial Strategy for Abatement (MISA) regulations
 - water takings that remove water from the watershed, as defined in Section 5 of the regulation
2. Starting January 1, 2006, the holders of permits for the following purposes must record volume taken daily, and report the data annually on or before March 31, beginning in 2007:
 - all other industrial and commercial purposes
 - wildlife and conservation
3. Starting January 1, 2007, the following permit holders must record volume taken daily, and report the data annually on or before March 31, beginning in 2008:
 - all other drinking water systems regulated by Ontario Regulation 170/03
 - agriculture
 - all other purposes

Section 10 – Water Transfer

This section, which prohibits the transfer of water out of Ontario's water basins, remains the same.

Section 11 – Revocation

Because the new regulation will replace Ontario Regulation 285/99, this section revokes Ontario Regulation 285/99.

Section 12 – Commencement

This section specifies January 1, 2005, as the date that the new regulation will come into force.